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10 Attorneys for Petitioner
DAILYEDEALS.COM, INC.
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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 DAILYEDEALS.COM, INC.,
18
19 Petitioner,
v.
20 ONLINENIC, INC.,
21 Respondent.

) Case No. CV 07-80135 JSW (MEJ)
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**PETITIONER'S REQUEST FOR
DISMISSAL WITHOUT PREJUDICE OF
THIS MISCELLANEOUS ACTION, AND
[PROPOSED] ORDER THEREON**

Honorable Maria-Elena James
United States Magistrate Judge

1 **PETITIONER'S REQUEST FOR DISMISSAL WITHOUT PREJUDICE**

2 TO THE HONORABLE COURT AND TO ALL INTERESTED PARTIES:

3
4 This miscellaneous action arose because Respondent OnlineNIC, Inc. failed to
5 respond to a subpoena served by Petitioner DailyeDeals.com, Inc. That subpoena was served in
6 connection with the Southern District of California action entitled *DailyeDeals.com, Inc. v.*
7 *ECoupons, Inc.*, S.D. Cal. Case No. 06-CV-1522-L-JMA (the "Underlying Action"). The Petition
8 that is this miscellaneous action (and all discovery matters attendant thereto) were referred to
9 Magistrate Judge James. (Docket Nos. 4, 6.) Because this matter consists entirely of the Petition
10 and its related discovery issues, the matter was effectively referred to Judge James in its entirety
11 for all purposes, and Petitioner DailyeDeals.com, Inc. consents to the jurisdiction of Judge James
12 for all purposes in dealing with this miscellaneous action (while Respondent OnlineNIC, Inc. has
13 never appeared herein).

14 The parties to the Underlying Action executed a settlement agreement on August 1,
15 2007. All material terms of that agreement have now been satisfactorily fulfilled, and on
16 November 6, 2007, a final judgment was entered and the Underlying Action was closed in the
17 Southern District of California. (See Docket Nos. 133-134 in the Underlying Action, of which this
18 Court may take judicial notice pursuant to Federal Rule of Evidence 201.)

19 This Court has scheduled a hearing for November 15, 2007 at 10:00 a.m. on
20 Petitioner's Order To Show Cause why OnlineNIC, Inc. should not be held in contempt for failing
21 to comply with DailyeDeals.com, Inc.'s subpoena. In view of the final settlement and judgment in
22 the Underlying Action, Petitioner requests that hearing be vacated and this miscellaneous action be
23 dismissed without prejudice, should unforeseen circumstances necessitate a new action and/or
24 motion to enforce Petitioner's rights as against Respondent.
25

1 Although Respondent OnlineNIC, Inc. has never appeared in this miscellaneous
2 action, this document is being served on Respondent OnlineNIC, Inc. and the parties to the
3 Underlying Action as indicated on the attached proof of service.
4

5 Respectfully Submitted:
6 DATED: November 12, 2007

7 SHEPPARD MULLIN RICHTER & HAMPTON LLP

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9 By /s/ Nathaniel Bruno

10 ROBERT S. GERBER
11 NATHANIEL BRUNO
12 MICHAEL MURPHY

13 Attorneys for Petitioner
14 DAILYDEALS.COM, INC.
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ORDER

The Court having considered Petitioner DailyeDeals.com, Inc.'s Request For Dismissal Without Prejudice set forth above, and good cause appearing therefore:

IT IS HEREBY ORDERED that the hearing on Petitioner's Order To Show Cause why OnlineNIC, Inc. should not be held in contempt for failing to comply with DailyeDeals.com, Inc.'s subpoena, set for November 15, 2007 at 10:00 a.m., is vacated.

IT IS HEREBY FURTHER ORDERED that this miscellaneous action is dismissed without prejudice.

IT IS SO ORDERED.

Dated: November 13, 2007



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11 Attorneys for Petitioner
DAILYDEALS.COM, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION
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16 DAILYDEALS.COM, INC.,)
Petitioner,)
17 v.)
18 ONLINENIC, INC.,)
Respondent.)
19

Case No. CV 07-80135 JSW (MEJ)

**PROOF OF SERVICE BY OVERNIGHT
MAIL AND U.S. FIRST CLASS MAIL**

PROOF OF SERVICE

I am employed in the County of San Francisco; I am over the age of eighteen years and not a party to the within entitled action; my business address is Four Embarcadero Center, 17th Floor, San Francisco, California 94111-4109.

On **November 12, 2007**, I am causing the following document to be served, described as


**PETITIONER'S REQUEST FOR DISMISSAL WITHOUT PREJUDICE OF THIS
MISCELLANEOUS ACTION, AND [PROPOSED] ORDER THEREON**

on the interested parties in this action through service of true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

See Attached Service List

- ☒ **BY MAIL:** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☒ **BY OVERNIGHT DELIVERY:** I served such envelope or package to be delivered on the same day to an authorized courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier.
- ☐ **BY FACSIMILE:** I served said document(s) to be transmitted by facsimile pursuant to Rule 2.306 of the California Rules of Court. The telephone number of the sending facsimile machine was 415-434-3947. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The sending facsimile machine (or the machine used to forward the facsimile) issued a transmission report confirming that the transmission was complete and without error. Pursuant to Rule 2.306(g)(4), a copy of that report is attached to this declaration.
- ☐ **STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- ☒ **FEDERAL:** I declare that I am a member of the bar of this Court. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on **November 12, 2007**, at San Francisco, California.



Nathaniel Bruno

SERVICE LIST

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(Parties to Southern District of California
Case No. 06 CV 1522 H (JMA) to which this
miscellaneous action is related.)

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